



THE CITY OF NEW YORK
LAW DEPARTMENT

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August 6, 2007

Via Facsimile (212) 805-6382

The Honorable Victor Marrero
United States District Judge
Southern District of New York
500 Pearl Street, Room 905
New York, New York 10007

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 8-6-07

Re: Philemon Nicholson v. City et al.
07 CV 6345 (VM)

Your Honor:

I am the Assistant Corporation Counsel in the Office of Michael A. Cardozo, Corporation Counsel of the City of New York, assigned to the defense of this action on behalf of defendant City. Plaintiff has filed the above-referenced complaint, wherein he alleges, *inter alia*, that on July 11, 2006, he was falsely arrested and detained by New York City police officers. Plaintiff further asserts a claim for malicious prosecution. Defendant City respectfully requests an extension of the time to answer or otherwise respond to the complaint from August 6, 2007 to October 6, 2007. Plaintiff's attorney, Victor M. Brown, Esq., has consented to our request.

Defendant has several reasons for seeking an enlargement of time. In accordance with this office's obligations under Rule 11 of the Federal Rules of Civil Procedure, the City requires additional time to investigate plaintiff's allegations. With respect to the false arrest and malicious prosecution charges, it is our understanding that records pertaining to the underlying criminal action, including police records, may have been sealed pursuant to New York Criminal Procedure Law § 160.50.

Additionally, plaintiff alleges that he sustained emotional distress. Therefore, this office is in the process of forwarding to plaintiff for execution a consent and authorization for the release of pertinent sealed records, as well as medical authorizations to obtain records pertaining to plaintiff's purported injuries. The enlargement of time will enable the City to properly assess the case and respond to the complaint.

Moreover, upon a review of the docket sheet, we have determined that an individually-named defendant, purportedly a New York City detective, has not been served. Thus, the requested extension will enable plaintiff to complete service of process. Once service is effected, the City will have additional time to determine, pursuant to Section 50-k of the New York General Municipal Law, and based on a review of the facts of the case, whether we may represent this individual defendant. See Mercurio v. The City of New York, et al., 758 F.2d 862, 864-65 (2d Cir. 1985) (quoting Williams v. City of New York, et al., 64 N.Y.2d 800, 486 N.Y.S.2d 918 (1985) (decision whether to represent individual defendants is made by the Corporation Counsel as set forth in state law)).

No previous request for an enlargement of time has been made. Accordingly, we respectfully request that defendant City's time to answer or otherwise respond to the complaint be enlarged from August 6, 2007 to October 6, 2007.

Thank you for your consideration in this matter.

Respectfully submitted,

Joyce Campbell Privéterre
Joyce Campbell Privéterre (JCP 1846)
Assistant Corporation Counsel

cc: Via Facsimile (718) 625-5536

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Request GRANTED. The time for defendant(s) to answer or otherwise move with respect to the complaint in this action is extended to 10-6-07

SO ORDERED.

8-6-07
DATE

[Signature]
VICTOR MARRERO, U.S.D.J.